

**FAA HEADQUARTERS EQUAL EMPLOYMENT
OPPORTUNITY MEDIATION PROGRAM**



March 4, 1998

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

FOREWORD

FAA Headquarters Equal Employment Opportunity Mediation Program. This order establishes a mediation program to resolve allegations of workplace discrimination and/or harassment raised through the Equal Employment Opportunity (EEO) pre-complaint process at the Federal Aviation Administration (FAA) headquarters.

A handwritten signature in black ink, reading "Fanny Rivera". The signature is fluid and cursive, with the first name "Fanny" and last name "Rivera" clearly legible.

Fanny Rivera
Assistant Administrator for Civil Rights

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CHAPTER 1. GENERAL

1-1. PURPOSE. This order establishes and provides for a mediation program to resolve allegations of workplace discrimination and/or harassment raised through the Equal Employment Opportunity (EEO) pre-complaint process at the Federal Aviation Administration (FAA) headquarters.

1-2. DISTRIBUTION. This order is distributed to the division level in the Washington headquarters and to all supervisors.

1-3. BACKGROUND.

a. The Civil Rights Act of 1991 encourages the use of Alternative Dispute Resolution (ADR) to resolve disputes arising out of discrimination and unlawful harassment in the workplace. The Equal Employment Opportunity Commission (EEOC), in its implementing regulations, provided agencies an additional 60 days in the pre-complaint stage to allow for informal resolution through the use of ADR if all parties agree to mediate.

b. The Administrative Dispute Resolution Act (**ADRA**) of 1996 (Public Law 104-320), gives Federal agencies the authority to utilize dispute resolution methods to resolve issues in controversy that relate to an administrative program, if the parties agree to such methods. The Associate Chief Counsel for ADR is the dispute resolution specialist responsible for implementing this Act within the FAA.

1-4. OBJECTIVE. The objective of this program is to resolve allegations at the earliest possible stage of the EEO process. Early resolution benefits the agency by creating a more hospitable workplace for all. Other benefits for the agency include reduction of the significant costs associated with processing complaints.

1-5. COVERAGE. The mediation process under this program will address matters covered by Title VII of the Civil Rights Act (discrimination on the basis of race, color, religion, sex, national origin, and reprisal), the Age Discrimination in Employment Act (discrimination on the basis of age, when the employee is at least 40 years old), the Rehabilitation Act (discrimination on the basis of physical or mental handicap), and the Equal Pay Act (discrimination on the basis of payment of wages based on sex). The mediation process may be used to address other matters, e.g., sexual orientation, raised through the EEO pre-complaint process.

1-6. DEFINITIONS.

a. ADR Program Manager (ADR PM). The individual assigned to manage the ADR program within the Office of Civil Rights. The ADR PM is responsible for case intake, mediator assignment, integrity of the process, and monitoring/evaluating the effectiveness of the program.

b. Affected Office. The FAA headquarters office in which the alleged discriminatory event(s) took place. This includes the Lines of Business (LOB) and the staff offices as defined in the current organizational manual.

c. Agency Representative. The individual who has the authority to grant or deny the requested relief.

d. Aggrieved Person. The individual who initiates contact with an EEO counselor in an attempt to informally resolve an issue of workplace discrimination or harassment.

e. ADR A range of problem-solving processes used for resolving conflict in lieu of formal, adversarial methods such as litigation. These processes usually involve the use of a neutral third party who works with the parties in dispute to help them find mutually acceptable solutions. ADR processes include, but are not limited to: negotiation, facilitation, conciliation, mediation, mini-trial, mediation-arbitration, and arbitration. Although mediation is the process selected for this program, other ADR processes may be selected if the ADR Program Manager decides they are appropriate and the parties agree.

f. Disputants. The parties in dispute. (In the mediation process the disputants are the aggrieved person and the agency representative.)

g. EEO Counselor. A neutral individual, who advises aggrieved persons about the EEO complaint process, determines the **basis(es)** and issue(s) of a potential complaint, conducts a limited inquiry into the allegations, seeks resolution, documents resolution or advises aggrieved persons of their rights to file a formal complaint, and prepares a report on counseling activities. The EEO counselor is not a mediator and does not conduct mediation.

h. Employee Representative. An individual who represents the employee's interests, (e.g., attorney, another employee, etc.).

i. Limited Inquiry. The collection of information with regard to an aggrieved individual's allegation. The limited inquiry is conducted by an EEO counselor as part of the pre-complaint EEO counseling process.

j. Mediator. A trained neutral third party. The mediator facilitates open discussion between disputants and assists them to negotiate a mutually agreeable resolution. A mediator has no authority to impose a decision or resolution on the parties.

k. Parties. The participants in the dispute resolution process.

l. Pre-Complaint Process. Aggrieved Persons who believe they have been discriminated against must consult with a counselor prior to filing a complaint in order to attempt to informally resolve the matter.

m. Resolution Agreement. A formal written agreement which defines the terms by which the disputants have agreed to resolve a dispute.

1-7. FORMS AND REPORTS. Appendix 1, FAA HQ Mediation Program Formats contains copies of documents used in the ACR mediation process. Reproduction and use of the documents in the appendix are encouraged.

1-8. RELATED PUBLICATIONS. Appendix 2, Related authorities, contains additional information on the statutory, regulatory, and administrative authority for this program.

1-9. REQUEST FOR INFORMATION. Information on mediation may be obtained from the Office of Civil Rights in room 1030 of the FAA headquarters building or by phone at (202) 267-3254.

CHAPTER 2. PROCEDURES FOR MEDIATION

2-1. **INTRODUCTION.** The first step in initiating the EEO complaint process is for the aggrieved person to contact an EEO counselor. In accordance with 29 CFR 1614, contact with an EEO counselor must be made within 45 days of the alleged act of discrimination or harassment or the effective date of a personnel action. Upon completion of the initial counseling stage and election of mediation, the following procedures will apply.

2-2. REQUEST FOR MEDIATION.

a. Mediation Option. During the initial discussion with the EEO counselor, the aggrieved person will be informed of her/his rights in the EEO process including the option to use ADR. The aggrieved person will be informed by the counselor that he/she may elect to attempt resolution of the allegation(s) through mediation. Opting to attempt resolution through mediation does not abridge the aggrieved person's rights in the EEO process. Generally, ADR will not be available until after the EEO counselor has attempted resolution as part of the pre-complaint process. If mediation does not result in resolution, the aggrieved person will be referred by the ADR PM to the EEO counselor to receive their final interview and Notice of Right to file a formal EEO complaint. By electing to enter into mediation, the pre-complaint counseling phase of the EEO complaint process is extended up to 60 calendar days. However, the total time for pre-complaint processing, including counseling and mediation, shall not exceed 90 days.

b. Agreement to Mediate. Agreement to enter into mediation will be documented on the Agreement to Mediate (appendix 1, figure 2). Either the aggrieved individual or the management official may request mediation. The EEO counselor will forward the Agreement to Mediate and the results of the limited inquiry to the ADR PM for action. The Agreement to Mediate will be considered a request until the disputants have signed the document or the request rescinded. Either of the disputants may decline to participate in mediation.

2-3. ADR CASE ASSESSMENT.

a. Upon receipt of the Agreement to Mediate, after the limited inquiry, the Office of Civil Rights will review the case in accordance with title 5 U.S.C., Chapter 5, Subchapter 4, Section 572. General Authority, to determine whether mediation is appropriate. Not all cases are appropriate for mediation. Appendix 3, Title 5, U.S.C., Chapter 4, Subchapter IV, Alternative Means of Dispute Resolution in the Administrative Process, contains the specific details.

b. Coordination with the Affected Office. The ADR PM will inform the affected office of the allegations and recommend mediation as a means to resolve the allegations. The ADR PM will remind the affected office that mediation is **voluntary**. The ADR PM will obtain the name of the person who will represent the affected office in mediation. The person selected by the affected office must be authorized to create a binding resolution on behalf of the affected office.

c. Case Referral. Based on the assessment described above, the matter will be referred to mediation or returned to the EEO counselor to complete the pre-complaint process. Cases accepted for mediation will be assigned a mediation case number by the ADR PM for tracking purposes.

d. Other ADR Processes. The ADR PM may recommend that an ADR process other than mediation is more appropriate. In such instances, the ADR PM may recommend the case for facilitation or another ADR process deemed more suitable for the matter. Participation in all ADR processes remain voluntary and must be agreed to by the aggrieved person and the agency representative.

e. Employee Representation. Aggrieved persons have the right to representation during all stages of the mediation process.

f. Funding Mediation. The affected office responding to the allegation of discrimination or harassment will be responsible for costs associated with the mediation. Where a collateral duty FAA mediator is not available, mediation costs may include (but are not limited to) hourly service and/or travel costs for a contract mediator or reimbursement of costs for a Federal mediator (e.g., Federal Mediation and Conciliation Service).

2-4. SELECTION OF MEDIATOR

a. Selection of Mediator. The ADR PM will review the roster of available mediators and select potential mediator(s).

b. Mediator Avoidance of Potential Conflict of Interest. The ADR PM will contact the potential mediator to determine if any potential conflict of interests exist. The ADR PM will inform the mediator of the name of the aggrieved person, the name of the agency representative, and the **basis(es)** of the allegation(s). The mediator will have the opportunity to decline, if a conflict of interest or the appearance of conflict exists.

c. Parties Acceptance of the Potential Mediator. The aggrieved person and the representative from the affected office will be provided the name(s) of the mediator(s) prior to the mediation. The parties will have the opportunity to request another mediator if there is reason to believe the mediator would not be impartial. If no objections are raised, the ADR PM notifies the mediator(s) that the process may begin.

2-5. MEDIATION.

a. Scheduling the Mediation. The mediator schedules mediation time(s) and place(s) with the parties. Mediation will be conducted in a neutral location. The ADR PM may assist in coordinating time(s) with the parties.

b. Resolution. If resolution is achieved, a Resolution Agreement is prepared by the mediator(s). Prior to signing the Resolution Agreement, the Agency Representative will accomplish appropriate coordination to ensure that the terms agreed to are in accordance with all laws and regulations, agency policy, and can be administratively completed within agreed upon timeframe. Resolution Agreements will be documented on the sample Resolution Agreement (appendix 1, figure 6). Resolution Agreements are binding on all parties.

c. No Resolution. If there is no resolution, the mediator will advise the ADR PM who will refer the aggrieved person back to the EEO counselor to complete the **pre-**complaint process. Referral back to the EEO counselor is documented on the Notice of Referral to EEO counselor format (appendix 1, figure 8). The EEO complaint process resumes at the point where ADR was elected, however the total timeframe for the **pre-**complaint process shall not exceed 90 calendar days.

d. Confidentiality. Confidentiality of the mediation session will be maintained in accordance with 5 U.S.C. Chapter 5 Subchapter IV Alternative Means of Dispute Resolution in the Administrative Process. This provision is printed in its entirety in Appendix 3.

e. Evaluation. Upon completion of the mediation, the parties will complete the Mediation Evaluation (appendix 1, figure 10) and forward it to the ADR PM.

2-6. POST MEDIATION.

a. Administration of Resolution Agreements. The parties to the agreement are responsible for affecting the agreed upon terms. The ADR PM will monitor compliance with resolution agreements reached during mediation. Resolution agreements will be kept in the Office of Civil Rights.

b. Breach of Resolution Agreements. If the Aggrieved person believes that the FAA has failed to comply with the terms of the resolution agreement, he/she shall notify the FAA Office of Civil Rights (ACR), 800 Independence Ave., SW., Washington, DC 20591, in writing, of the alleged noncompliance within 30 days of when he/she knew, or should have known, of the alleged noncompliance. The aggrieved person may request that the terms of the resolution agreement be specifically implemented, or alternatively, that the allegation(s) be reinstated for further action from the point the complaint processing ceased, in accordance with 29 C.F.R. Section 1614.504.

CHAPTER 3. FEDERAL AVIATION ADMINISTRATION MEDIATORS

3-1. FEDERAL AVIATION ADMINISTRATION MEDIATORS. 29 CFR 1614.102 states that each agency shall provide sufficient resources to its equal employment opportunity program to ensure efficient and successful operations. In accordance with this provision, FAA will have its own pool of collateral duty mediators.

3-2. RECRUITMENT OF MEDIATORS. Each LOB and staff office will nominate individuals to participate in the program. The Office of Civil Rights will interview and select from among individuals nominated to serve as mediators.

3-3. TRAINING OF THE MEDIATORS. Each LOB and staff office will contribute a proportionate dollar amount, based on their percentage of headquarters employees to fund mediation training. The training of mediators may be conducted by an outside organization (e.g., the Federal Mediation and Conciliation Service, the Department of Health and Human Services ADR Team, the Justice Center of Atlanta, and others). New mediators will be required to co-mediate with a senior mediator before mediating on their own. Eligibility to mediate on their own will be determined by the Office of Civil Rights.

3-4. ROSTER OF ELIGIBLE MEDIATORS. The ADR PM will maintain a roster of eligible mediators who are appropriately trained and possess the skills necessary to conduct mediations (i.e., successful completion of mediation training and deemed suitable to conduct mediation by the Office of Civil Rights).

APPENDIX 1. FM HQ MEDIATION PROGRAM FORMATS

This appendix contains copies of document used in the FAA headquarters mediation process.

FIGURE 1. INSTRUCTIONS FOR COMPLETING THE AGREEMENT TO MEDIATE FORMAT

1. The EEO counselor enters the name of the aggrieved person in the space for aggrieved person.
2. The affected office against which the allegations are made is entered in the space for affected FAA office.
3. The aggrieved person signs the bottom of the Agreement.
4. The Employee Representative, if any, signs the bottom of the Agreement.
5. The ADR PM obtains and enters the name of the Agency Representative.
6. The ADR PM obtains the signature of the Agency Representative.

**FIGURE 2. FEDERAL AVIATION ADMINISTRATION
OFFICE OF CIVIL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION**

AGREEMENT TO MEDIATE

The use of Alternative Dispute Resolution (ADR) for resolving issues is an option provided aggrieved persons under the procedures for processing EEO discrimination allegations.

This agreement is between _____
(Aggrieved Person)

and _____
(Affected FAA Office)

represented by _____
(Agency Representative)

The parties agree to enter into mediation with the intent of reaching a mutually agreeable resolution of the dispute regarding:

By signing this document, the parties agree that the pre-complaint process is extended by 60 calendar days. The total EEO counseling period may not exceed 90 calendar days from the date EEO counseling began.

The provisions of this agreement are as follows:

1. Mediators are neutral third parties who will assist the parties reach their own resolution. Mediators will not make judgments or impose a resolution.
2. Mediators do not offer advice nor do they provide legal counsel.
3. The parties have a right to have a representative of their choice accompany and advise them, or other counsel may assist them anytime during the mediation process.

AGREEMENT TO MEDIATE

4. Confidentiality

a. Except as provided in (d) and (e) below, the parties agree that the mediator shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the mediator, unless -

(1) all parties to the mediation and mediator consent in writing, and, if the dispute resolution communication was provided by a **nonparty** participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a mediator should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to-

(a) prevent a manifest injustice;

(b) help establish a violation of law; or

(c) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

b. The parties agree that they shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless -

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the mediation consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to -

(a) prevent a manifest injustice

(b) help establish a violation of law; or

(c) prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted **from** the mediation or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the mediator, the dispute resolution communication was provided to or was available to all parties to the mediation.

c. Any dispute resolution communication that is disclosed in violation of (a) or (b) above, shall not be admissible in any proceeding relating to the dispute with respect to which the communication was made.

(1) The parties may agree to alternative confidential procedures for disclosures by a mediator. Upon such agreement the parties shall inform the mediator before the commencement of the mediation of any modifications to the provisions of (a) above that will govern the confidentiality of the mediation. If the parties do not so inform the mediator, (a) shall apply.

(2) To qualify for the exemption established under (j) below, an alternative confidential procedure under this section may not provide for less disclosure than the confidential procedures otherwise provided herein.

e. If a demand for disclosure, by way of discovery request or other legal process, is made upon the mediator regarding a dispute resolution communication, the mediator shall make reasonable efforts to notify the parties and any affected **nonparty** participants of the demand. Any party or affected **nonparty** participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the mediator to disclose the requested information shall have waived any objection to such disclosure.

f. Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of the mediation.

g. (a) and (b) above shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to the mediation.

h. (a) and (b) above shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

i. (a) and (b) above shall not prevent use of a dispute resolution communication to resolve a dispute between the mediator in a mediation and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

j. A dispute resolution communication which is between a mediator and a party and which may not be disclosed under this section shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

5. While the parties intend to continue with mediation until a resolution is reached, it is understood that either or both parties may withdraw from mediation at any time. It is agreed that if one or both parties decide to withdraw from mediation, the parties will discuss their decision in the presence of both parties and the mediator(s).

6. If the mediator(s) determines that it is not possible to resolve the dispute through mediation, the mediator can terminate the process once this has been conveyed to the parties.

7. If agreement is reached, the mediator(s) will prepare a resolution agreement which will be signed by the parties.

8. By entering into a resolution agreement, the aggrieved agrees that the allegations/issues forming the basis of the dispute are withdrawn and no longer serve as the basis of a complaint against the agency or its agents.

9. Mediators will maintain the confidentiality of the mediation session unless there is an indication of immediate harm or danger.

The parties have read, understand, and agree to the provisions of this agreement.

----- Aggrieved Person	----- Date	----- Agency Representative	----- Date
----- Employee Representative	----- Date	----- Mediator	----- Date
		----- Mediator	----- Date

FIGURE 3. INSTRUCTIONS FOR COMPLETION OF THE DESIGNATION OF REPRESENTATIVE

1. The aggrieved person enters her/his name.
2. The aggrieved person enters the name, address, and phone number of her/his representative.
3. The aggrieved person signs the form.
4. The aggrieved person obtains the signature of her/his representative.

**FIGURE 4. FEDERAL AVIATION ADMINISTRATION
OFFICE OF CIVIL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION
DESIGNATION OF REPRESENTATIVE**

I,-----, hereby designate:
(Aggrieved Person)

(Name)

(Street Address)

(City, State, Zip Code)

(Telephone)

as my representative in this matter.

(Aggrieved Person’s Signature) (Date)

(Representative’s Signature) (Date)

FIGURE 5. INSTRUCTIONS FOR COMPLETING THE RESOLUTION
AGREEMENT FORMAT

1. Mediator fills in the name of the aggrieved person, affected office, and Agency Representative.
2. Mediator copies the Dispute from the Agreement to Mediation form.
3. Mediator enters any additional agreements made by the aggrieved individual.
4. Mediator enters any additional agreements made by the Agency Representative.
5. . If the terms tentatively agreed to by the Agency Representative require coordination with individuals not present at mediation (e.g., Human Resource Management, Chief Counsel, etc.), the Agency Representative will coordinate with appropriate individuals.
6. Once appropriate coordination and approval is accomplished the parties will sign the Resolution Agreement.

**FIGURE 6. FEDERAL AVIATION ADMINISTRATION
OFFICE OF CIVIL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION
RESOLUTION AGREEMENT**

This agreement is between _____
(Aggrieved person)

and _____
(Affected FAA Office)

represented by _____
(Agency Representative)

with regard to the following matter, hereinafter “Dispute”:

In full and complete resolution of the Dispute, the undersigned parties stipulate and agree as follows:

1. In exchange for the promises made by the Federal Aviation Administration (hereinafter “Agency” or “FAA”) in paragraph 2 of this agreement:
 - a. The Aggrieved person hereby withdraws the allegations described in the Dispute.
 - b. Except as to enforcement proceedings under Paragraph 7 of this Agreement, the Aggrieved person agrees to waive any and all claims against the United States, its agencies and departments, and its officers and employees in their official and individual capacities which have arisen or may arise out of the subject matter of the Dispute.
 - c.

RESOLUTION AGREEMENT

2. In exchange for the promises of the Aggrieved person contained in paragraph 1 of this Agreement, the Agency agrees that:

- a. No reprisal action will be taken against Aggrieved person.
- b.
- c.
- d.

3. This Agreement represents the full and complete resolution of all outstanding allegations brought by the aggrieved person, on his/her behalf, all actual or potential claims arising from the Dispute, as well as any claims that might be filed with regard to the execution and implementation of this resolution, except to enforce the agreement as set forth in Paragraph 7.

4. This Agreement is reached without final judgment as to the merits of the complaint and shall in no way constitute an admission of liability, wrong-doing, or discrimination by the Agency, its managers, supervisors, or employees.

5. This Agreement is nonprecedential and may not be cited in any other proceeding or in any forum.

6. The parties shall keep the terms of this Agreement confidential in accordance with 5 U.S.C. 570 et. seq. except as otherwise required by law, and shall neither disclose nor discuss its contents with any third party, except those persons necessary to carry out the terms or resolve disputes over compliance of this Resolution Agreement.

7. If the Aggrieved person believes that the FAA has failed to comply with the terms of this Agreement, (s)he shall notify the FAA Office of Civil Rights (ACR-I), 800 Independence Ave. SW., Washington, DC 20591, in writing of the alleged noncompliance within 30 days of when (s)he knew or should have known of the alleged noncompliance. The Aggrieved person may request that the terms of the Resolution Agreement be specifically implemented, or alternatively, that the allegation(s) be reinstated for further action from the point processing ceased in accordance with 29 C.F.R. 1614.504.

RESOLUTION AGREEMENT

8. The Aggrieved person attests that (s)he read and understood the provisions of this Resolution Agreement and that her/his signature is voluntary and is in no way coerced by any party or the representative of any party.
9. By entering into this Agreement, the aggrieved person and the Agency acknowledge that this Agreement is the result of mediated discussions consisting of mutual considerations, and contains the complete and entire agreement by which the parties are bound.

Approved by:

(Approving Offices Date
as necessary)

(Approving Offices Date
as necessary)

_____	_____	_____	_____
Aggrieved Person	Date	Agency Representative	Date

_____	_____
Employee Representative	Date

**FIGURE 7. INSTRUCTIONS FOR COMPLETING
THE NOTICE OF REFERRAL TO EEO COUNSELOR**

1. When resolution of a dispute is not achieved through mediation, the aggrieved person is referred back to the EEO Counselor to complete the pre-complaint processing.
2. This notice is ~~from~~ the ADR PM to the aggrieved person.
3. The ADR PM signs the notice.
4. The aggrieved person signs to acknowledge receipt of the notice.
5. A copy of the notice is forwarded to the EEO Counselor and the Civil Rights Office.

Figure 8. Sample Notice of Referral to EEO Counselor

800 Independence Ave., SW
Washington, DC 20591

Subject **ACTION:** Referral to EEO Counselor to Complete
: EEO Pre-complaint Counseling

Date:

From: (ADR PM)

Reply
to
Attn.
of

To: (Aggrieved Person)

This is to notify you that the mediation you requested under 29 CFR 1614.105(f) has concluded. Since your allegations have not been resolved in mediation, you must return to your EEO Counselor to complete the pre-complaint process not later than 90 calendar days from the date of your initial contact with the EEO Counselor.

Your election to enter mediation extended the pre-complaint processing time by 60 calendar days . Your EEO Counselor will conduct a final interview with you and inform you of your right to file a formal discrimination complaint. You will also be informed where, when, and to whom a complaint may be filed.

If you have questions on this process, please contact the Office of Civil Rights at (202) 267-3254 for further assistance.

(ADR PM)

I acknowledge receipt of this notice.

Signature: _____
(Aggrieved Person),

Date:_____

cc: EEO Counselor

FIGURE 9. INSTRUCTIONS FOR COMPLETING
MEDIATION EVALUATION

1. At the conclusion of mediation, whether resolution was achieved or not, both the aggrieved person and the Agency Representative are requested to complete this form.
2. Completed forms are to be forwarded to the ADR Program Manager in the Office of Civil Rights (ACR).
3. Identification of name and routing symbol are optional.

**FIGURE 10. FEDERAL AVIATION ADMINISTRATION
OFFICE OF CIVIL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION
MEDIATION EVALUATION**

1. Do you feel the mediation process resolved the issues in a timely manner?
☐ Yes ☐ No
2. **Are you** satisfied with the results of the mediation?
☐ Yes ☐ Somewhat ☐ No
3. Did mediation change your understanding of the initial issues?
☐ Yes ☐ Somewhat ☐ No
4. Do you feel that mediation provided a better understanding of the other party(ies) perspective?
☐ Yes ☐ Somewhat ☐ No
5. Do you feel that you understand the other party’s perspective better as a result of the mediation?
☐ Yes ☐ Somewhat ☐ No
6. Do you feel that the work environment will improve as a result of the mediation?
☐ Yes ☐ Somewhat ☐ No
7. If you participated in the pre-complaint process again, would you use mediation to resolve your dispute?
☐ Yes ☐ No
8. Did you feel that the mediator was impartial?
☐ Yes ☐ Somewhat ☐ No
- If not, to whom was the mediator partial and why?
9. Do you feel that mediation was worth the time you invested in the process?
☐ Yes ☐ Somewhat ☐ No
- If yes, please provide comments
10. Do you have any suggestions for improving the mediation process?
11. I am the ☐ Aggrieved Person ☐ Agency Representative.

Name (optional)
Routing Symbol (Optional)

APPENDIX 2. RELATED AUTHORITIES

a. STATUTES.

(1) The Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex (gender), national origin, or reprisal.

(2) The Age Discrimination in Employment Act of 1967 prohibits discrimination in employment based on age when the employee is at least 40 years old.

(3) The Equal Pay Act prohibits discrimination in payment of wages based on sex (gender).

(4) The Rehabilitation Act of 1973 prohibits discrimination in employment on the basis of physical or mental handicap.

(5) The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) reauthorizes Federal agencies to utilize dispute resolution to resolve an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(6) The U.S.C. Chapter 5. Subchapter IV. Alternative Means of Dispute Resolution In The Administrative process, as amended. (Appendix 3)

(7) The 49 U.S.C. 102, Department of Transportation, (Presidential Appointees).

b. REGULATIONS.

(1) 29 Code of Federal Regulations (CFR) Part 1614, Federal Sector Equal Employment Opportunity governs processing complaints of Federal employment discrimination.

(2) 49 CFR 1.23(a). Subtitle A - Office of the Secretary of Transportation Spheres of Primary Responsibility for the overall planning, direction and control of departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in departmental programs, etc.

c. DIRECTIVES. Equal Employment Opportunity Commission Equal Employment Opportunity Management Directive (MD) 110. Federal Sector Complaints Processing Manual provides guidance on processing complaints of Federal employment discrimination.

d. SYSTEMS. The Federal Aviation Administration Personnel Management System, dated March 28, 1996, states in Part VII, Prohibited Personnel Practices, “Any FAA employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:(i) discriminate for or against any employee or applicant for employment, on the basis of: race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Acts of 1964 (42 U.S.C. 2000e-16); age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a); sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)); handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or marital status, sexual orientation, or political affiliation, as prohibited under any law, rule, or regulation ...”

APPENDIX 3. 5 U.S.C. CHAPTER 5, SUBCHAPTER IV, ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

571. Definitions

For the purposes of this subchapter, the term-

- (1) “agency” has the same meaning as in section 55 l(1) of this title;
- (2) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter,
- (3) “alternative means of dispute resolution” means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mistrials, arbitration, and use of ombuds, or any combination thereof,
- (4) “award” means any decision by an arbitrator resolving the issues in controversy;
- (5) “dispute resolution communication” means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or **nonparty** participant; except that a written agreement to enter into a dispute resolution proceeding, or **final** written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;
- (6) “dispute resolution proceeding” means any process in which an alternative means of dispute resolution is used to re-solve an issue in controversy in which a neutral is appointed and specified parties participate;
- (7) “in confidence” means, with respect to information, that the information is provided-
 - (A) with the expressed intent of the source that it not be disclosed; or
 - (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;
- (8) “issue in controversy” means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement-
 - (A) between an agency and persons who would be substantially affected by the decision; or
 - (B) between persons who would be substantially affected by the decision;
- (9) “neutral” means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;
- (10) “party” means-
 - (A) for a proceeding with named parties, the same as in section 55 l(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) “person” has the same meaning as in section 55 1-(2) of this title; and

(12) “roster” means a list of persons qualified to provide services as neutrals.

§ 572. **General authority**

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if-

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) **the** matter involves or may bear upon significant questions of Government policy that require additional procedures before a **final** resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding-,

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record;
and

(6) the agency, must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency’s fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

§ 573. **Neutrals**

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, **shall-**

(1) encourage and facilitate agency use of alternative means of dispute resolution; and

(2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

§ 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless-

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a **nonparty** participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) **the** dispute resolution communication **is** required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that **such** testimony or disclosure is necessary to-

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communications unless-

(1) the communication was prepared by the party seeking disclosure;

- (2) all parties to the dispute resolution proceeding consent in writing;
 - (3) the dispute resolution communication has already been made public;
 - (4) the dispute resolution communication is required by statute to be made public;
 - (5) a court determines that such testimony or disclosure is necessary to-
 - (A) prevent a manifest injustice;
 - (B) help establish a violation of law; or
 - (C) prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;
 - (6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution communication or to the enforcement of such an agreement or award; or
 - (7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.
- (c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.
- (d) (1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.
- (2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.
- (e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected **nonparty** participants of the demand. Any party or affected **nonparty** participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.
- (f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.
- (g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

§ 575. Authorization of arbitration

(a) (1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to-

(A) submit only certain issues in controversy to arbitration; or

(B) arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitting to the arbitration shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

(b) An officer or employee of an agency shall not offer to use arbitration for the resolution of issues in controversy unless such officer or employee

(1) would otherwise have authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

(c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.

§ 576. Enforcement of arbitration agreements

An agreement to arbitrate a matter to which this subchapter applies is enforcement pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

§577. Arbitrators

(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

- (b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

§ 578. Authority of the arbitrator

An arbitrator to whom a dispute is referred under this subchapter **may-**

- (1) regulate the course of and conduct arbitral hearings;
- (2) administer oaths and affirmations;
- (3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and
- (4) make awards.

§ 579. Arbitration proceedings

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing **shall-**

- (1) be responsible for the preparation of such record;
- (2) notify the other parties and the arbitrator of the preparation of such record;
- (3) furnish copies to all identified parties and the arbitrator; and
- (4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c) (1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a

memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, **unless-**

- (1) the parties agree to some other time limit; or
- (2) the agency provides by rule for some other time limit.

§ 580. Arbitration awards

(a) (1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter should include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

(b) The award in an arbitration proceeding shall become **final** 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional **30-day** period by serving a notice of such extension on all other parties before the end of the first **30-day** period.

(c) A **final** award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(d) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

§ 581. Judicial review

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b) (1) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section **10(b)** of title 9.

(2) A decision by the head of an agency under section 580 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.

\$582. Repealed. Pub. L. 104-320, § 4(b) (1), Oct. 19, 1996, 110 Stat. 3871.1

§ 583. Support services

For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, State, local, and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.

§ 584. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.